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2014 Edition

Motion to Strike

A Guide to Resources in the Law Library

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See Also:

- [Answer, Special Defense, Counterclaim and Setoff to a Civil Complaint](#)
- [Motion to Dismiss](#)
- [Oral Argument in Civil Matters](#)
- [Request to Revise](#)

[Connecticut Judicial Branch Website Policies and Disclaimers](#)

<http://www.jud.ct.gov/policies.htm>

Introduction

A Guide to Resources in the Law Library

- **Motion to Strike:** “shall be used whenever any party wished to contest: (1) the legal sufficiency of the allegations of any complaint, counterclaim or cross claim, or of any one or more counts thereof, to state a claim upon which relief can be granted; or (2) the legal sufficiency of any prayer for relief in any such complaint, counterclaim or cross complaint; or (3) the legal sufficiency of any such complaint, counterclaim or cross complaint, or any count thereof, because of the absence of any necessary party or, pursuant to Section 17-56(b), the failure to join or give notice to any interested person; or (4) the joining of two or more causes of action which cannot properly be united in one complaint, whether the same be stated in one or more counts; or (5) the legal sufficiency of any answer to any complaint, counterclaim or cross complaint, or any part of that answer including any special defense contained therein....” Conn. Practice Book [§ 10-39\(a\)](#) (2014).
- **Objection to Motion to Strike:** “Any adverse party shall have thirty days from the filing of the motion to strike to respond to a motion to strike filed pursuant to Section 10-39 by filing and serving in accordance with Sections 10-12 through 10-17 a memorandum of law in opposition.” Conn. Practice Book [§ 10-40\(a\)](#) (2014).
- **Memorandum of Law:** “Each motion to strike must be accompanied by a memorandum of law citing the legal authorities upon which the motion relies.” Conn. Practice Book [§ 10-39\(c\)](#) (2014).
- **Non-Joinder of Parties:** “A motion to strike on the ground of the nonjoinder of a necessary party or noncompliance with Section 17-56(b) must give the name and residence of the missing party or interested person or such information as the moving party has as to the identity and residence of the missing party or interested person and must state the missing party's or interested person's interest in the cause of action.” Conn. Practice Book [§ 10-39\(d\)](#) (2014).
- **Substitute Pleading:** “Within fifteen days after the granting of any motion to strike, the party whose pleading has been stricken may file a new pleading; provided that in those instances where an entire complaint, counterclaim or cross complaint, or any count in a complaint, counterclaim or cross complaint has been stricken, and the party whose pleading or a count thereof has been so stricken fails to file a new pleading within that fifteen-day period, the judicial authority may, upon motion, enter judgment against said party on said stricken complaint, counterclaim or cross complaint, or count thereof. Nothing in this section shall dispense with the requirements of Sections 61-3 or 61-4 of the appellate rules.” Conn. Practice Book [§ 10-44](#) (2014).
- **Motion to Dismiss:** “The motion to dismiss is governed by Practice Book §§ 10-30 through 10-34. Properly granted on jurisdictional grounds, it essentially asserts that, as a matter of law and fact, a plaintiff cannot state a cause of action that is properly before the court. *Third Taxing District v. Lyons*, 35 Conn.App. 795, 803, 647 A.2d 32, cert. denied, 231 Conn. 936, 650 A.2d 173 (1994); see Practice Book § 10-31. By contrast, the motion to strike attacks the sufficiency of the pleadings. Practice Book § 10-39; see also 1 E. Stephenson, *Connecticut Civil Procedure* (3d Ed.1997) § 72(a), pp. 216-17.” [Egri v. Foisie](#), 83 Conn. App. 243, 848 A.2d 1266 (2004).

Section 1: Legal Sufficiency of Complaint

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion strike filed to contest the legal sufficiency of the allegations of any complaint, counterclaim or cross claim, or of any one or more count thereof, to state a claim upon which relief can be granted.

DEFINITIONS:

- **Complaint:** "The first pleading on the part of the plaintiff shall be known as the complaint. It shall contain a statement of the facts constituting the cause of action." Conn. Practice Book [§ 10-20](#) (2014).
- **Standard of Review:** "Because a motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court, our review of the court's ruling on the [defendants' motion] is plenary.... We take the facts to be those alleged in the complaint that has been stricken and we construe the complaint in the manner most favorable to sustaining its legal sufficiency.... Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied.... Moreover, we note that [w]hat is necessarily implied [in an allegation] need not be expressly alleged.... It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted.... Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically." [Violano v. Fernandez](#), 280 Conn. 310, 317-18, 907 A.2d 1188 (2006).

STATUTES:

- Conn. Gen. Stat. (2013)
[Chapter 898](#) – Pleading
[§ 52-91](#). Pleadings; contents of complaint.

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

- Connecticut Practice Book (2014)
 - § [10-6](#). Pleadings Allowed and Their Order.
 - § [10-10](#). Supplemental Pleadings; Counterclaims.
 - § [10-39](#). Motion to Strike; Grounds.
 - § [10-40](#). –Opposition; Date for Hearing.
 - § [10-43](#). –When Memorandum of Decision Required on Motion to Strike.
 - § [10-44](#). –Substitute Pleading; Judgment.
 - § [10-45](#). –Stricken Pleading Part of Another Cause or Defense.

FORMS:

- [Figure 1: Motion to Strike](#)
- 3 Joel M. Kaye, Connecticut Practice Series, [CT Civil Practice Forms](#) (2004).
106.2 Motion to Strike

- 18 Erin Carlson, Connecticut Practice Series, [Summary Judgment & Related Termination Motions](#) (2014).
 - § 1:48 Sample supporting and opposition briefs — Motion to strike portions of complaint (cause of action) — Negligent investigation by employer — Motion
 - § 1:49 Sample supporting and opposition briefs — Motion to strike portions of complaint (cause of action) — Negligent investigation by employer — Memorandum of points and authorities in support of motion to strike
 - § 1:50 Sample supporting and opposition briefs — Motion to strike portions of complaint (cause of action) — Negligent investigation by employer — Memorandum of points and authorities in opposition to motion to strike
 - § 1:51 Sample supporting and opposition briefs — Motion to strike portions of complaint (cause of action) — Breach of contract in medical malpractice context — Motion
 - § 1:52 Sample supporting and opposition briefs — Motion to strike portions of complaint (cause of action) — Breach of contract in medical malpractice context — Memorandum of points and authorities in support of motion to strike
 - § 1:53 Sample supporting and opposition briefs — Motion to strike portions of complaint (causes of action) — Breach of implied covenant of good faith, Unfair Insurance Practices Act claim, Unfair Trade Practices Act claim, and timeliness — Motion and order
 - § 1:55 Sample supporting and opposition briefs — Motion to strike portions of complaint (causes of action) — Fraud, aiding and abetting breach of fiduciary duty, tortious interference, piercing corporate veil, theft, conspiracy, and unjust enrichment — Motion
 - § 1:57 Motion to strike complaint (causes of action) — Negligence and CUTPA violations against particular defendant — Memorandum of points and authorities in support of motion to strike
 - § 1:58 Motion to strike complaint in its entirety — Memorandum of points and authorities in support of motion to strike — Breach of restrictive covenants in employment contract
- Ralph P. Dupont, [Dupont on Connecticut Civil Practice](#) (2014-2015).
 - F-10-39 – Motion to Strike

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Mueller v. Tepler](#), 312 Conn. 631 (2014). "Practice Book §10-44 expressly provides that '[w]ithin fifteen days after the granting of any motion to strike, the party whose pleading has been stricken may file a new pleading....' Thus, a trial court has no discretion to render judgment for the moving party upon granting a motion to strike, unless it is clear that the nonmoving party will be unable to replead. See *Larobina v. McDonald*, 274 Conn. 394, 401, 876 A.2d 522 (2005)."
- [Carr v. Hotshots Cafe](#), Superior Court, Judicial District of Windham, CV-146007736-S (July 30, 2014) (2014 WL 4494529). "Defendants have cited the more pertinent authorities on this procedural issue, namely *Wallace v. McCray*, Superior Court, judicial district of New Haven, Docket Number NNH CV11 6024667 (June 8, 2012; B. Fischer, J.), *Dumas v. Price Chopper, Inc.*, Superior Court, judicial district of Windham, Docket Number CV09 5004896 (March 31, 2010; Riley, J.), and *Collar v. DaCruz*, Superior Court, judicial district of Hartford, Docket Number CV03 0830138 (August 13, 2004; Booth, J.). Simply stated, these cases hold that when a party has mixed two or more causes of action in a single count, with severable paragraphs alleging the various causes involved, a defendant may address a motion to strike at the specific paragraphs embodying the matters which are deemed to be insufficiently pled."
- [Historic Dist. Comm'n of Borough of Fenwick v. Sciame](#), 140 Conn. App. 209, 216, 58 A.3d 354, 359 (2013). "In their memorandum of law in opposition to the motion to strike, the defendants raised no objection to the form or content of the motion to strike regarding the second count of the counterclaim. In doing so, they waived any defectiveness in pleading regarding the second count. See *Morris v. Hartford Courant Co.*, 200 Conn. 676, 683 n. 5, 513 A.2d 66 (1986) (because Practice Book § 154 [now § 10-41] is not jurisdictional in nature, court will consider improperly pleaded motion to strike when opposing party does not object); see also *Bouchard v. People's Bank*, 219 Conn. 465, 468 n. 4, 594 A.2d 1 (1991) (same)."
- [JP Morgan Chase Bank v. Rodrigues](#), 109 Conn. App. 125, 131, 952 A.2d 56, 59-60 (2008) " '[A] counterclaim is a cause of action existing in favor of the defendant against the plaintiff and on which the defendant might have secured affirmative relief had he sued the plaintiff in a separate action.... A motion to strike tests the legal sufficiency of a cause of action and may properly be used to challenge the sufficiency of a counterclaim.' (Citations omitted; internal quotation marks omitted.) *Fairfield Lease Corp. v. Romano's Auto Service*, 4 Conn.App. 495, 496, 495 A.2d 286 (1985); see also Practice Book § 10-39."

Accordingly, we conclude that a motion to strike was the proper procedural vehicle to test the sufficiency of the defendants' counterclaim."

- [Stuart v. Freiberg](#), 102 Conn. App. 857, 862, 927 A.2d 343, 346 (2007). "The motion itself failed to set forth separately each claim of insufficiency and failed to specify distinctly the reasons for each claimed insufficiency. Simply stating that all of the counts 'are legally insufficient' and that they 'fail to allege any facts that would indicate [that the] defendant is liable to [the] plaintiffs' cannot be considered compliance with Practice Book § 10-41. The complaint was in four counts, and the defendant gave several reasons for his challenge to the causes of action as alleged by the plaintiffs in his memorandum of law in support of the motion. Those reasons, however, were not contained in the motion itself, and the fact that they were provided in the accompanying memorandum of law does not save the motion from being considered 'fatally defective.' See *Barasso v. Rear Still Hill Road, LLC*, supra, 64 Conn.App. at 13-14, 779 A.2d 198.3."
- [Ross v. Forzani](#), 88 Conn. App. 365, 369, 869 A.2d 682, 685 (2005). "Accordingly, a party has two mutually exclusive options: A party may file either an amended pleading, thereby waiving the right to challenge the striking of the initial complaint; or a party may appeal from the judgment rendered regarding the initial stricken complaint. *Royce v. Westport*, [supra, 183 Conn. at 178-79, 439 A.2d 298]. The choice is left to the plaintiff, but once he files an amended pleading, the ruling on the [original motion to strike] ceases to be an issue. The rule is a sound one, as it serves to prevent the prolongation of litigation. *Good Humor Corp. v. Ricciuti*, [supra, 160 Conn. at 136, 273 A.2d 886]. However, there is an exception to the waiver rule. If the plaintiff pleads facts in the substitute complaint which are materially different from those in the original complaint, then the waiver rule does not apply. *Parsons v. United Technologies Corp.*, 243 Conn. 66, 74, 700 A.2d 655 (1997)." (Internal quotation marks omitted.) *Parker v. Ginsburg Development CT, LLC*, supra, 85 Conn.App. at 780, 859 A.2d 46. Conversely, the waiver rule applies if the amended complaint does not contain allegations that are materially different from the allegations contained in the original complaint."
- [Comm'r of Labor v. C.J.M. Servs., Inc.](#), 268 Conn. 283, 293, 842 A.2d 1124, 1131 (2004). "Although we agree with the Appellate Court's statement that '[a] bald assertion that the defendant has a contractual obligation, without more, is insufficient to survive a motion to strike'; *Commissioner of Labor v. C.J.M. Services, Inc.*, supra, 73 Conn. App. at 64, 806 A.2d 1105; upon reviewing the contents of the

commissioner's amended complaint, we disagree with that court's characterization of the allegations found therein as a 'bald assertion.' Id. The commissioner alleged in count three that '[the general contractor] was required to pay prevailing wages to all mechanics, laborers, and workmen on said project pursuant to the contract for said public works project....' The commissioner set forth a specific contractual obligation and alleged that it had not been met. Whether the terms of the contract support that allegation is a factual question to be determined by the fact finder and, therefore, is not at issue when the trial court considers a motion to strike."

**WEST KEY
NUMBERS:**

- *Pretrial Procedure*, Key Numbers 531-710

TREATISES:

- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
 - Chapter 12 Pleadings: Defendant's Motion to Strike and Plaintiff's Response.
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998 ed.).
 - Chapter X. Motion to Strike
- 18 Erin Carlson, Connecticut Practice Series, [Summary Judgment & Related Termination Motions](#) (2014).
 - Chapter 1. Motion to Strike
 - III. Failure to State Cause of Action or Claim
- Ralph P. Dupont, [Dupont on Connecticut Civil Practice](#) (2014-2015).
 - Chapter 10. Pleadings.
 - § 10-39.1 Function of the Motion to Strike
 - § 10-39.2 Well-Plead Allegations Admitted
 - § 10-41.1 Grounds Must be Expressly Stated
 - § 10-44.1 Pleading Over After Motion to Strike
 - § 10-44.2 Amendment of Pleading; Waiver of Right to Appeal
- Renee Bevacqua Bollier, [Stephenson's Connecticut Civil Procedure](#) (1997).
 - Chapter 5. The Complaint
 - Sec. 41. Need to State a "Cause of Action"
 - Chapter 7. Motions Prior to Trial
 - Sec. 72. Function and Scope of Motion to Strike
 - Sec. 73. Defects Reached by Motion to Strike
 - Sec. 74. Procedure on Motions to Strike
 - Sec. 75. Effect of Ruling on Motion to Strike
 - Chapter 9. Disposition Short of Trial
 - Sec. 93. Motions to Strike

LAW REVIEWS:

- Corey M. Dennis, Roadmap to Connecticut Procedure, 83 Connecticut Bar Journal 271 (2009).
- Wes Horton, Alice in Demurrerland, 51 Conn. B.J. 107 (1977).

Section 2: Legal Sufficiency of Prayer for Relief

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion strike filed to contest the legal sufficiency of any prayer for relief in any such complaint, counterclaim or cross complaint.

DEFINITIONS:

- **Prayer for relief:** "The first pleading on the part of the plaintiff shall be known as the complaint. It shall contain a statement of the facts constituting the cause of action and, on a separate page of the complaint, **a demand for the relief, which shall be a statement of the remedy or remedies sought.**" Conn. Practice Book [§ 10-20](#) (2014).

STATUTES:

- Conn. Gen. Stat. (2013)
[Chapter 898](#) – Pleading
§ [52-91](#). Pleadings; contents of complaint.

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

- Connecticut Practice Book (2014)
 - § [10-6](#). Pleadings Allowed and Their Order.
 - § [10-39](#). Motion to Strike; Grounds.
 - § [10-40](#). –Opposition; Date for Hearing.
 - § [10-43](#). –When Memorandum of Decision Required on Motion to Strike.
 - § [10-44](#). –Substitute Pleading; Judgment.
 - § [10-45](#). –Stricken Pleading Part of Another Cause or Defense.

FORMS:

- [Figure 1: Motion to Strike](#)
- 3 Joel M. Kaye, Connecticut Practice Series, [CT Civil Practice Forms](#) (2004).
106.2 Motion to Strike
- 18 Erin Carlson, Connecticut Practice Series, [Summary Judgment & Related Termination Motions](#) (2014).
 - § 1:45 Sample supporting and opposition briefs — Motion to strike portions of complaint (attorney's fees)
 - § 1:46 Sample supporting and opposition briefs — Motion to strike portions of complaint (attorney's fees) — Memorandum of points and authorities in support of motion to strike portions of complaint
 - § 1:47 Sample supporting and opposition briefs — Motion to strike portions of complaint (punitive damages arising from alcohol consumption in vehicle case) — Plaintiff's opposition to motion to strike

- Ralph P. Dupont, [Dupont on Connecticut Civil Practice](#) (2014-2015).
F-10-39 – Motion to Strike

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Connecticut Light and Power Co. et al. v. Paradigm Health Center of Torrington, LLC et al.](#) Superior Court, Judicial District of New Haven at New Haven, CV-14-6044661-S, (August 18, 2014) (2014 WL 4746841). "Additionally, 'in order to award punitive damages, [the] evidence must reveal a reckless indifference to the rights of others or an intentional and wanton violation of those rights.' *Arnove v. Enfield*, 79 Conn.App. 501, 521, 831 A.2d 260 (2003). In the present case, the second and third prayer for relief stem from the plaintiff's allegation that the defendants failed to pay for utility services provided by the plaintiff. The plaintiff is not seeking attorneys fees pursuant to a contractual agreement between the parties or a statute. The plaintiff has not sufficiently alleged that the defendants had a reckless indifference to the plaintiff's rights or that the defendants engaged in wanton or wilful misconduct."
- [Connecticut Podiatric Med. Ass'n v. Health Net of Connecticut, Inc.](#), 49 Conn. Supp. 462, 468, 892 A.2d 1046, 1051 (Super. Ct. 2006). "Practice Book § 10-39(a)(2) provides a party 'may' file a motion to strike to contest, inter alia, the legal sufficiency of a prayer for relief; by its terms, it does not provide it is the exclusive vehicle particularly where, as here, the disputed issue is that of standing. *Housing Authority v. Local 1161*, 1 Conn.App. 154, 157, 468 A.2d 1251, cert. denied, 192 Conn. 802, 471 A.2d 244 (1984)."
- [Central New Haven Dev. Corp. v. Potpourri, Inc.](#), 39 Conn. Supp. 132, 133, 471 A.2d 681, 681 (Super. Ct. 1983). "A party may utilize a motion to strike in order to test the legal sufficiency of a prayer for relief. Practice Book § 152. A motion to strike admits all well pleaded allegations, and is construed most favorably to the plaintiff here. *Verdon v. Transamerica Ins. Co.*, 187 Conn. 363, 365, 446 A.2d 3 (1982)."

WEST KEY NUMBERS:

- *Pretrial Procedure*, Key Numbers 531-710

TREATISES:

- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
 - Chapter 12 Pleadings: Defendant's Motion to Strike and Plaintiff's Response.
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998 ed.).
 - Chapter X. Motion to Strike

- Renee Bevacqua Bollier, [Stephenson's Connecticut Civil Procedure](#) (1997).
 - Chapter 5. The Complaint
 - Sec. 51. Prayer for Relief
 - Chapter 7. Motions Prior to Trial
 - Sec. 72. Function and Scope of Motion to Strike
 - Sec. 73. Defects Reached by Motion to Strike
 - Sec. 74. Procedure on Motions to Strike
 - Sec. 75. Effect of Ruling on Motion to Strike
 - Chapter 9. Disposition Short of Trial
 - Sec. 93. Motions to Strike
- 18 Erin Carlson, Connecticut Practice Series, [Summary Judgment & Related Termination Motions](#) (2014).
 - Chapter 1. Motion to Strike
 - III. Failure to State Cause of Action or Claim
 - 1:24 Improper Prayer for Relief-Generally
 - 1:25 –Punitive Damage Allegations
 - 1:27 –Attorney's Fees
- Ralph P. Dupont, [Dupont on Connecticut Civil Practice](#) (2014-2015).
 - Chapter 10. Pleadings.
 - § 10-39.1 Function of the Motion to Strike
 - § 10-39.2 Well-Plead Allegations Admitted
 - § 10-41.1 Grounds Must be Expressly Stated
 - § 10-44.1 Pleading Over After Motion to Strike
 - § 10-44.2 Amendment of Pleading; Waiver of Right to Appeal

LAW REVIEWS:

- Corey M. Dennis, [Roadmap to Connecticut Procedure](#), 83 Connecticut Bar Journal 271 (2009).
- Wes Horton, [Alice in Demurrerland](#), 51 Conn. B.J. 107 (1977).

Section 3: Non-Joinder or Misjoinder of Parties

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion to strike filed to contest the legal sufficiency of any such complaint, counterclaim or cross complaint, or any count thereof, because of the absence of any necessary party, or pursuant to section 17-56(b), the failure to join or give notice to any interested person.

DEFINITIONS:

- **Misjoinder:** "Naming an improper person as a party in a legal action constitutes misjoinder." [Bloom v. Miklovich](#), 111 Conn. App. 323, 958 A.2d 1283 (2008).
- "The exclusive remedy for **misjoinder** of parties is by motion to strike." [Zanoni v. Hudon](#), 42 Conn.App. 70, 73, 678 A.2d 12 (1996).
- **Indispensable parties:** "Parties are considered indispensable when they not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such condition that its final [disposition] may be...inconsistent with equity and good conscience." [Kosiorek v. Smigelski](#), 138 Conn. App. 695, 54 A.3d 564 (2012).
- **Necessary parties:** "Necessary parties, in contrast, are those [p]ersons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it.... [B]ut if their interests are separable from those of the parties before the court, so that the court can proceed to a decree, and do complete and final justice, without affecting other persons not before the court, the latter are not indispensable parties." Ibid.

STATUTES:

You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2013)
[Chapter 898](#) – Pleading
§ [52-107](#). Additional parties may be summoned in.
§ [52-108](#). Nonjoinder and misjoinder of parties

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

- Connecticut Practice Book (2014)
§ [9-3](#). Joinder of Parties and Actions; Interested Persons as Plaintiffs.
§ [9-4](#). –Joinder of Plaintiffs in One Action.
§ [9-18](#). Addition or Substitution of Parties.
§ [9-19](#). Addition or Substitution of Parties--Nonjoinder and Misjoinder of Parties.

- § [10-6](#). Pleadings Allowed and Their Order.
- § [10-39](#). Motion to Strike; Grounds.
- § [10-40](#). –Opposition; Date for Hearing.
- § [10-43](#). –When Memorandum of Decision Required on Motion to Strike.
- § [10-44](#). –Substitute Pleading; Judgment.
- § [10-45](#). –Stricken Pleading Part of Another Cause or Defense.
- § [11-3](#). Motion for Misjoinder of Parties.
- § [17-56](#)(b). Declaratory Judgment; Scope—Procedure for Declaratory Judgment.

FORMS:

- [Figure 1: Motion to Strike](#)
- [Figure 2: Misjoinder of Parties](#)
- 3 Joel M. Kaye, Connecticut Practice Series, [CT Civil Practice Forms](#) (2004).
 - 106.2 Motion to Strike
 - 106.7 Misjoinder of parties—Motion to strike
- 18 Erin Carlson, Connecticut Practice Series, [Summary Judgment & Related Termination Motions](#) (2013).
 - § 1:56 Motion to strike complaint (failure to join necessary party) — Memorandum of points and authorities in support of motion to strike
- Ralph P. Dupont, [Dupont on Connecticut Civil Practice](#) (2014-2015).
 - F-10-39 – Motion to Strike

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update

- [D'Appollonio v. Griffo-Brandao](#), 138 Conn. App. 304, 313-14, 53 A.3d 1013, 1020 (2012). “It is well established, however, that an action cannot be defeated due to the nonjoinder or misjoinder of parties, and failure to notify or join indispensable parties does not deprive a court of subject matter jurisdiction. General Statutes § 52-108; *Batte-Holmgren v. Commissioner of Public Health*, 281 Conn. 277, 288-89, 914 A.2d 996 (2007); *Bauer v. Souto*, 277 Conn. 829, 838-39, 896 A.2d 90 (2006). Instead, the remedy for nonjoinder of parties is by motion to strike. *Bauer v. Souto*, supra, at 839, 896 A.2d 90.”
- [Arnold v. Thermospas, Inc.](#), 49 Conn. Supp. 103, 105-06, 863 A.2d 250, 253 (Super. Ct. 2004) “In the present case, however, there are common questions of law. For example, one predominant issue here is whether Tournas' conduct was extreme and outrageous. This issue is, preliminarily, a question for the court. *Appleton v. Board of Education*, 254 Conn. 205, 210, 757 A.2d 1059 (2000). The plaintiffs have alleged that Tournas has taken similar actions toward all of them. The plaintiffs will have to prove that the defendants engaged in a pattern of behavior that amounted to

retaliation against the plaintiffs for complaints made about Tournas. When deciding a motion to strike on the ground of misjoinder of parties, the court may properly consider the economical uses of judicial resources. See *Balog v. Shelton Restaurant*, Superior Court, judicial district of Ansonia–Milford, Docket No. CV–04 0084313S, 2004 WL 1965919 (August 2, 2004) (Lager, J.). Mindful of this decisional authority, this court is of the opinion that joinder is appropriate here.”

- [McCart v. City of Shelton](#), 81 Conn. App. 58, 62, 837 A.2d 872 (2004) “The individual differences between the plaintiffs, i.e., the differences in their properties, go to the very heart of the issue-whether the defendants reached the correct result with the method of assessment. Cf. *Bertelson v. Norwich*, supra, Superior Court, Docket No. 119199, 2001 WL 1429167 (fact in dispute for each party, whether appropriate formula applied to reach valuation, was common to each plaintiff). To answer that question, each of the plaintiffs must provide individual evidence. The plaintiffs' common facts are tangential, and the crucial facts differ for each plaintiff. There is no common question of fact or law. Therefore, the court properly granted the defendants' motion to strike the plaintiffs' complaint for improper joinder.”

**WEST KEY
NUMBERS:**

- *Pretrial Procedure*, Key Numbers 531-710

TREATISES:

- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
 - Chapter 12 Pleadings: Defendant’s Motion to Strike and Plaintiff’s Response.
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998 ed.).
 - Chapter X. Motion to Strike
- Renee Bevacqua Bollier, [Stephenson’s Connecticut Civil Procedure](#) (1997).
 - Chapter 6. Dilatory Pleas
 - Sec. 61. Defects of Parties
 - c. Nonjoinder of Parties
 - d. Misjoinder of Parties
 - Chapter 7. Motions Prior to Trial
 - Sec. 72. Function and Scope of Motion to Strike
 - Sec. 73. Defects Reached by Motion to Strike
 - Sec. 74. Procedure on Motions to Strike
 - Sec. 75. Effect of Ruling on Motion to Strike
 - Sec. 78. Motions Involving Parties
 - Chapter 9. Disposition Short of Trial
 - Sec. 93. Motions to Strike

- 18 Erin Carlson, Connecticut Practice Series, [Summary Judgment & Related Termination Motions](#) (2014).
 - Chapter 1. Motion to Strike
- Ralph P. Dupont, [Dupont on Connecticut Civil Practice](#) (2014-2015).
 - Chapter 10. Pleadings.
 - 10-39.1 Function of the Motion to Strike
 - 10-39.2 Well-Plead Allegations Admitted
 - 10-41.1 Grounds Must be Expressly Stated
 - 10-44.1 Pleading Over After Motion to Strike
 - 10-44.2 Amendment of Pleading; Waiver of Right to Appeal
 - Chapter 11. Motions, Requests
 - 11-3.1 Misjoining Parties Who Cannot be Joinded in the Same Action

LAW REVIEWS:

- Corey M. Dennis, [Roadmap to Connecticut Procedure](#), 83 Connecticut Bar Journal 271 (2009).
- Wes Horton, [Alice in Demurrerland](#), 51 Conn. B.J. 107 (1977).

Section 4: Joining of Causes of Action

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion to strike filed to contest the joining of two or more causes of action which cannot properly be united in one complaint, whether the same be stated in one or more counts.

DEFINITIONS:

- **Cause of Action:** "A cause of action is that single group of facts that is claimed to have brought about an unlawful injury to the plaintiff and that entitles the plaintiff to relief.... Even though a single group of facts may give rise to rights to several different kinds of relief, it is still a single cause of action." [C & H Mgmt., LLC v. City of Shelton](#), 140 Conn. App. 608, 616, 59 A.3d 851, 857 (2013).
- "If **several causes of action** are united in the same complaint, they shall all be brought to recover, either 1) upon contract, express or implied, or (2) for injuries, with or without force, to person and property, or either, including a conversion of property to the defendant's use, or (3) for injuries to character, or (4) upon claims to recover real property, with or without damages for the withholding thereof, and the rents and profits of the same, or (5) upon claims to recover personal property specifically, with or without damages for the withholding thereof, or (6) claims arising by virtue of a contract or by operation of law in favor of or against a party in some representative or fiduciary capacity, or (7) upon claims, whether in contract or tort or both, arising out of the same transaction or transactions connected with the same subject of action." Conn. Gen. Stat. § [52-97](#) (2013).
- "Whenever any party wishes to contest the joining of two or more causes of action which cannot properly be united in one complaint, whether the same be stated in one or more counts, that party may do so by filing a motion to strike." [Hartzheim v. Derekseth Corp.](#), Superior Court, Judicial District of Hartford-New Britain at Hartford, Docket No. 320693 (April 10, 1987) (Noren, J., 2 CSR 537).
- **Transaction:** "A 'transaction' has been defined as 'something which has taken place whereby a cause of action has arisen.' 'It must therefore consist of an act or agreement, or several acts or agreements having some connection with each other, in which more than one person is concerned, and by which the legal relations of such persons between themselves are altered.' *DeFelippi v. DeFelippi*, 23 Conn.Supp. 352, 353, 183 A.2d 630 (1962), quoting *Craft Refrigerating Machine Co. v. Quinnipiac Brewing Co.*, 63 Conn. 551, 560, 29 A. 76 (1893); see *Goggins v. Fawcett*, 145 Conn. 709, 711, 147 A.2d 187 (1958)." [Bailey v. Thomas](#), CV980577916, 24 Conn. L. Rptr. 687, 1999 WL 482640 (Conn. Super. Ct. June 18,

1999)

STATUTES:

- Conn. Gen. Stat. (2013)
[Chapter 898](#) – Pleading
§ [52-97](#). Union of legal and equitable causes of action; limitation.

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

- Connecticut Practice Book (2014)
§ [10-6](#). Pleadings Allowed and Their Order.
§ [10-21](#). Joinder of Causes of Action.
§ [10-22](#). –Transactions Connected with Same Subject.
§ [10-23](#). –Joinder of Torts.
§ [10-24](#). –Legal and Equitable Relief.
§ [10-39](#). Motion to Strike; Grounds.
§ [10-40](#). –Opposition; Date for Hearing.
§ [10-43](#). –When Memorandum of Decision Required on Motion to Strike.
§ [10-44](#). –Substitute Pleading; Judgment.
§ [10-45](#). –Stricken Pleading Part of Another Cause or Defense.

FORMS:

- [Figure 1: Motion to Strike](#)
- 3 Joel M. Kaye, Connecticut Practice Series, [CT Civil Practice Forms](#) (2004).
106.2 Motion to Strike
- Ralph P. Dupont, [Dupont on Connecticut Civil Practice](#) (2014-2015).
F-10-39 – Motion to Strike
- 18 Erin Carlson, Connecticut Practice Series, [Summary Judgment & Related Termination Motions](#) (2014).
 - Chapter 1. Motion to Strike

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update

- [Mills v. Rita H. Carter Revocable Trust](#), Superior Court, Judicial District of New London at New London, CV12-6015038 (Feb. 19, 2013) (55 Conn. L. Rptr. 605) (2013 WL 1110914). “Accordingly, courts have discretion concerning whether two or more actions should be joined, and are to consider first whether the present circumstances fall under one of the seven categories enumerated by Practice Book § 10–21, and second, whether the causes of action affect all the parties to the action. Finally, courts often focus on the ‘if it appears to the judicial authority that they cannot all be conveniently heard together’ language in § 10–21 and decide whether to permit joinder based on the equitable considerations in the situation rather than on a strict application of § 10–21.”
- [Voris v. Molinaro](#), 302 Conn. 791, 798, 31 A.3d 363, 367 (2011). “Although we repeatedly have articulated and relied on the principle that the settlement of the underlying injury

claim bars the derivative action for loss of consortium, we recognize that neither *Hopson*, *Jacoby*, nor *Ladd* had a procedural posture identical to the present one. Accordingly, we take this opportunity to articulate the strong policy reasons that support the application of this rule to claims such as the plaintiff's. The same rationale that mandates the joinder of loss of consortium claims with the claims of the directly injured party also should apply to bar a claim for loss of consortium once the predicate action has been settled."

- Cianciolo v. Musumano, Superior Court, Judicial District of Waterbury, CV08-5008286S, (Aug. 12, 2008) (2008 WL 4070160). "The joinder statute permits any number of counts to be joined in one complaint if they fall within one of the categories. Category (2) emphasized above applies here because both counts involve personal injury. However, '[i]n addition to the requirement that all claims must fall within a single one of the categories listed, the rule of joinder of actions requires that all plaintiffs and all defendants must be common to all the claims and that all counts be triable at the same place under the rules as to venue.' 1 Stephenson's Connecticut Civil Procedure (3rd Ed., 1997) § 47(c) citing Practice Book § 133 (now 10-21) (sentence emphasized above following category 7).

"Commonality does not exist here, as there are two different events with different defendants. Category (7) emphasized above then becomes relevant and applicable, provided the joined claims arise out of the 'same transaction or transactions connected with the same subject of action.'"

- Delavega v. Eleftheriou, Superior Court of Connecticut, Judicial District of Stamford, CV95-0145179 (1996 WL 33890) (15 Conn. L. Rptr. 541) (Jan. 9, 1996). "The purpose of joinder is to "enable parties to settle all their controversies in a single action.'" *Hutchings v. Hutchings*, Superior Court, Judicial District of Litchfield, Docket No. 054449 (February 22, 1993) (Dranginis, J. 8 Conn. L. Rptr. 433) quoting *Veits v. Hartford*, 134 Conn. 428, 436, 58 A.2d 389 (1948). Section 133 is to be liberally construed. *Goggins v. Fawcett*, 145 Conn. 709, 710, 147 A.2d 187 (1958). Different causes of action are properly joined in one complaint 'if both arose out of the same transaction, or if, while one arose out of one transaction and the other out of another, both these transactions were "connected with the same subject matter.'" *Hratko v. Bethel Board of Education*, Superior Court, Judicial District of Danbury, Docket No. 317836 (March 7, 1995) (Leheny, J.) quoting *Craft Refrigerating Machine Co. v. Quinnipiac Brewing Co.*, 63 Conn. 551, 560, 29 A 76 (1983)."

**WEST KEY
NUMBERS:**

- *Pretrial Procedure*, Key Numbers 531-710

TREATISES:

- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
 - Chapter 12 Pleadings: Defendant's Motion to Strike and Plaintiff's Response.
- Ralph P. Dupont, [Dupont on Connecticut Civil Practice](#) (2014-2015).
 - Chapter 10. Pleadings.
 - B.2 Joining Several Causes of Action
 - 10-39.1 Function of the Motion to Strike
 - 10-39.2 Well-Plead Allegations Admitted
 - 10-41.1 Grounds Must be Expressly Stated
 - 10-44.1 Pleading Over After Motion to Strike
 - 10-44.2 Amendment of Pleading; Waiver of Right to Appeal
- Renee Bevacqua Bollier, [Stephenson's Connecticut Civil Procedure](#) (1997).
 - Chapter 5. The Complaint.
 - Sec. 47. Joinder of Causes of Action
 - Chapter 7. Motions Prior to Trial
 - Sec. 72. Function and Scope of Motion to Strike
 - Sec. 73. Defects Reached by Motion to Strike
 - Sec. 74. Procedure on Motions to Strike
 - Sec. 75. Effect of Ruling on Motion to Strike
 - Chapter 9. Disposition Short of Trial
 - Sec. 93. Motions to Strike

LAW REVIEWS:

- Corey M. Dennis, *Roadmap to Connecticut Procedure*, 83 Connecticut Bar Journal 271 (2009).
- Wes Horton, *Alice in Demurrerland*, 51 Conn. B.J. 107 (1977).

Section 5: Legal Sufficiency of Answer

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion to strike filed to contest the legal sufficiency of any answer to any complaint, counterclaim or cross complaint, or any part of that answer including any special defense contained therein, that party may be by filing a motion to strike the contested pleading or part thereof.

SEE ALSO:

- [Answer, Special Defense, Counterclaim and Setoff to a Civil Complaint](#)

DEFINITIONS:

- "The defendant in the answer shall specially deny such allegations of the complaint as the defendant intends to controvert, admitting the truth of the other allegations, unless the defendant intends in good faith to controvert all the allegations, in which case he or she may deny them generally..." Conn. Practice Book § [10-46](#) (2014)
- **Legal sufficiency:** "means whether the allegations stated constitute a legally recognized defense if that defense is ultimately proven at trial." [Chen v. Sikorsky](#), CV 970082165, 1998 WL 272800 (Conn. Super. Ct. May 18, 1998).
- "[A] plaintiff can [move to strike] a special defense". [Nowak v. Nowak](#), 175 Conn. 112, 116, 394 A.2d 716 (1978).
- "[T]he purpose of a special defense is to plead facts that are consistent with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action." [Braffman v. Bank of America Corp.](#), 294 Conn. 501, 519, 998 A.2d 1169 (2010).

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

- Connecticut Practice Book (2014)
 - § [10-6](#). Pleadings Allowed and Their Order.
 - § [10-39](#). Motion to Strike; Grounds.
 - § [10-40](#). –Opposition; Date for Hearing.
 - § [10-43](#). –When Memorandum of Decision Required on Motion to Strike.
 - § [10-44](#). –Substitute Pleading; Judgment.
 - § [10-45](#). –Stricken Pleading Part of Another Cause or Defense.
 - § [10-46](#). The Answer; General and Special Denial
 - § [10-50](#). –Denials; Special Defenses

FORMS:

- [Figure 1: Motion to Strike](#)
- 3 Joel M. Kaye, Connecticut Practice Series, [CT Civil Practice Forms](#) (2004).
106.2 Motion to Strike
- 18 Erin Carlson, Connecticut Practice Series, [Summary](#)
Motion to Strike - 21

Judgment & Related Termination Motions (2014).

§ 1:54 Sample supporting and opposition briefs —
Motion to strike portions of complaint (special
defense) — Plaintiff's failure to respond to
Defendant — Motion

- Ralph P. Dupont, [Dupont on Connecticut Civil Practice](#) (2014-2015).
F-10-39(3) Motion to Strike (Another Form)
- Robert M. Singer, [Library of CT Collection Law Forms](#) (2009).
9-004 Motion to Strike
9-005 Memorandum in Support of Motion to Strike
- Joshua Koskoff, [Library of CT Personal Injury Law Forms 2nd ed](#) (2014).
5-002 Motion to Strike Defendant's Special Defense

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [R.S. Silver Enterprises, Inc. v. Pascarella](#), 148 Conn. App. 359, 365-66, 86 A.3d 471, 474 (2014). "If proven, the facts set forth in the defendants' twenty-first special defense would establish that the plaintiff had no right to sue the defendants for breach of the participation agreement. Because such allegations were not inconsistent with the allegations of the plaintiff's complaint, but, nevertheless, if proven, would have defeated the plaintiff's claims against them, the trial court improperly struck that special defense."
- [JP Morgan Chase Bank v. Rodrigues](#), 109 Conn. App. 125, 129-30, 952 A.2d 56, 59 (2008). "'The granting of a motion to strike a special defense is not a final judgment and is therefore not appealable.... The striking of special defenses neither terminates a separate proceeding nor so concludes the rights of the parties that further proceedings cannot affect them.'" (Citation omitted; internal quotation marks omitted.) *Mechanics Savings Bank v. Townley Corp.*, 38 Conn.App. 571, 573, 662 A.2d 815 (1995). Accordingly, we cannot consider that portion of the defendants' appeal that pertains to the striking of their special defenses. That issue must await review, if at all, in an appeal from the final decision on the merits of the case. See *id.*, at 574, 662 A.2d 815."

WEST KEY NUMBERS:

- *Pretrial Procedure*, Key Numbers 531-710

TEXTS & TREATISES:

- Kimberly A. Peterson, [Civil Litigation in Connecticut: Anatomy of a Lawsuit](#) (1998).
 - Chapter 12 Pleadings: Defendant's Motion to Strike and Plaintiff's Response.

- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#) (1998 ed.).
 - Chapter X. Motion to Strike
- Renee Bevacqua Bollier, [Stephenson's Connecticut Civil Procedure](#) (1997).
 - Chapter 7. Motions Prior to Trial
 - Sec. 72. Function and Scope of Motion to Strike
 - Sec. 73. Defects Reached by Motion to Strike
 - Sec. 74. Procedure on Motions to Strike
 - Sec. 75. Effect of Ruling on Motion to Strike
 - Chapter 8. The Answer, Counterclaims
 - Sec. 87. Objections to Answer
 - Chapter 9. Disposition Short of Trial
 - Sec. 93. Motions to Strike
- 18 Erin Carlson, Connecticut Practice Series, [Summary Judgment & Related Termination Motions](#) (2014).
 - Chapter 1. Motion to Strike
 - III. Failure to State Cause of Action or Claim
 - 1:29 Striking other Pleadings-Answer or Cross Complaint
- Ralph P. Dupont, [Dupont on Connecticut Civil Practice](#) (2014-2015).
 - Chapter 10. Pleadings.
 - § 10-39.1 Function of the Motion to Strike
 - § 10-39.2 Well-Plead Allegations Admitted
 - § 10-41.1 Grounds Must be Expressly Stated
 - § 10-44.1 Pleading Over After Motion to Strike
 - § 10-44.2 Amendment of Pleading; Waiver of Right to Appeal
 - § 10-44.3 Stricken Pleading; Preserving Appellate Rights by Offer Evidence at Trial

LAW REVIEWS:

- Corey M. Dennis, [Roadmap to Connecticut Procedure](#), 83 Connecticut Bar Journal 271 (2009).
- Wes Horton, [Alice in Demurrerland](#), 51 Conn. B.J. 107 (1977).

Figure 1: Motion to Strike (Form)

Form 105.1, Heading and Form 106.2, Motion to Strike, 2 Conn. Practice Book (1997)

No. _____

Superior Court

(First Named Plaintiff)

Judicial District of _____

v.

at _____

(First Named Defendant)

(Date)

Motion to Strike

The plaintiff (or defendant) in the above entitled matter moves to strike (*describe specific pleading or prayer for relief to be stricken*) filed by the adverse party (or name of party)

because it fails to state a claim upon which relief can be granted.

(*Set forth claim of insufficiency and specify the reasons therefor.*)

or

because of the absence of a necessary party. (*Set forth name and residence of such party and must state his interest in the cause of action.*)

or

because the two (or more) causes of action stated therein cannot properly be united in one (cross) complaint (or counterclaim) (*set forth reasons*)

or

State any other facts and reasons to show material to be stricken is legally insufficient.

Supporting memorandum of law citing legal authorities on which the motion relies is required. See Rules, Sec. 155. Annex Order, see Rules, Sec. 196 (1978; see Rules, Sec. 152)

Figure 2: Misjoinder of Parties (Form)

Form 105.1, Heading and *Form 106.7*, Misjoinder of parties, 2 Conn. Practice Book (1997)

No. _____ Superior Court

(First Named Plaintiff)
v. _____
at _____

(First Named Defendant) _____
(Date)

Misjoinder of parties

(*Name*), named in the writ and complaint as a coplaintiff in the above entitled action is not properly a party because

(*state reasons*)

Wherefore it is moved that (*name*) be dropped as a plaintiff.

Order

(*date*)

It appearing to the court that the foregoing motion should be granted, it is hereby

Ordered that (*name*) be dropped as a plaintiff in this action.

By the Court (_____ ,J.)

Assistant Clerk

(P.B. 1963, Form 245)